

## LEGISLATIVE BILL 189

Approved by the Governor June 13, 1995

Introduced by Withem, 14; Hartnett, 45; Pedersen, 39; Preister, 5

AN ACT relating to courts; to amend sections 24-201.01, 24-301.02, 24-803, 24-809.01, and 24-810, Revised Statutes Supplement, 1994; to change the salaries of judges; to change the number of judges in a district court judicial district; to change membership of the Judicial Resources Commission; to provide duties for the State Court Administrator and the Judicial Resources Commission; to change procedures for filling judicial vacancies; to harmonize provisions; to provide operative dates; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 24-201.01, Revised Statutes Supplement, 1994, is amended to read:

24-201.01. On July 1, 1989 ~~1992~~, the salary of the Chief Justice and judges of the Supreme Court shall be ~~eighty-eight thousand one hundred fifty-seven dollars and thirty cents. On July 1, 1995, the salary of the Chief Justice and the judges of the Supreme Court shall be ninety-one thousand six hundred eighty-three dollars and fifty-nine cents. On July 1, 1996, the salary of the Chief Justice and the judges of the Supreme Court shall be ninety-four thousand eight hundred ninety-two dollars and fifty-two cents, sixty-six thousand six hundred eighty-eight dollars and eighty-four cents. On July 1, 1997, the salary shall be increased by five percent of the salary received immediately prior to such date. On January 3, 1991, the salary shall be increased to seventy-seven thousand dollars. On July 1, 1991, the salary shall be increased by seven percent of the salary received immediately prior to such date. On July 1, 1992, the salary shall be increased by seven percent of the salary received immediately prior to such date.~~

The Chief Justice and the judges of the Supreme Court shall hold no other public office of profit or trust during their terms of office nor accept any public appointment or employment under the authority of the government of the United States for which they receive compensation for their services. Such salaries shall be payable in equal monthly installments.

Sec. 2. Section 24-301.02, Revised Statutes Supplement, 1994, is amended to read:

24-301.02. The State of Nebraska shall be divided into the following twelve district court judicial districts:

District No. 1 shall contain the counties of Saline, Jefferson, Gage, Thayer, Johnson, Pawnee, Nemaha, Fillmore, and Richardson;

District No. 2 shall contain the counties of Sarpy, Cass, and Otoe;

District No. 3 shall contain the counties of Lancaster;

District No. 4 shall contain the county of Douglas;

District No. 5 shall contain the counties of Merrick, Platte, Colfax, Boone, Nance, Hamilton, Polk, York, Butler, Seward, and Saunders;

District No. 6 shall contain the counties of Dixon, Dakota, Cedar, Burt, Thurston, Dodge, and Washington;

District No. 7 shall contain the counties of Knox, Cuming, Antelope, Pierce, Wayne, Madison, and Stanton;

District No. 8 shall contain the counties of Cherry, Keya Paha, Brown, Rock, Blaine, Loup, Custer, Boyd, Holt, Garfield, Wheeler, Valley, Greeley, Sherman, and Howard;

District No. 9 shall contain the counties of Buffalo and Hall;

District No. 10 shall contain the counties of Adams, Clay, Phelps, Kearney, Harlan, Franklin, Webster, and Nuckolls;

District No. 11 shall contain the counties of Hooker, Thomas, Arthur, McPherson, Logan, Keith, Perkins, Lincoln, Dawson, Chase, Hayes, Frontier, Gosper, Dundy, Hitchcock, Red Willow, and Furnas; and

District No. 12 shall contain the counties of Sioux, Dawes, Box Butte, Sheridan, Scotts Bluff, Morrill, Garden, Banner, Kimball, Cheyenne, Grant, and Deuel.

In the fourth district there shall be fourteen judges of the district court. In the third district there shall be six judges of the district court. In the twelfth district there shall be five judges of the district court. In the ~~second and fifth district~~ second and fifth districts there shall be four judges of the district court. In the first, ~~second~~, sixth, ninth, and eleventh districts there shall be three judges of the district court. In the

seventh, eighth, and tenth districts there shall be two judges of the district court.

Sec. 3. Section 24-803, Revised Statutes Supplement, 1994, is amended to read:

24-803. (1) As the term of a member of a judicial nominating commission initially appointed or selected expires, the term of office of each successor member shall be for a period of four years. The Governor shall appoint all successor members of each nominating commission who are judges of the Supreme Court and citizen members. The lawyers residing in the judicial district or area of the state served by a judicial nominating commission shall select all successor and alternate members of such commission in the manner prescribed in section 24-806. The term of office of an alternate member of a commission shall be for a period of two years. No member of any nominating commission, including the Supreme Court member of any such commission, shall serve more than a total of eight consecutive years as a member of the commission, and if such member has served for more than six years as a member of the commission, he or she shall not be eligible for reelection or reappointment.

(2) For purposes of this section and Article V, section 21, of the Constitution of Nebraska, a member of a judicial nominating commission shall be deemed to have served on such commission if he or she was a member of the commission at the time of the publication of the notice required by subsection ~~(5)~~ (1) of section 24-810.

Sec. 4. Section 24-809.01, Revised Statutes Supplement, 1994, is amended to read:

24-809.01. There is hereby created the Judicial Resources Commission consisting of: (1) ~~Three~~ Four judges, including one district court judge, one county court judge, one separate juvenile court judge, and one Justice or judge of the Supreme Court, all of whom shall be appointed by the Supreme Court; (2) one member of the Nebraska State Bar Association from each of the six judicial districts prescribed in Article V, section 5, of the Constitution of Nebraska who shall have practiced law in this state for at least ten years and who shall be appointed by the Executive Council of the Nebraska State Bar Association; and (3) one citizen from each of the six judicial districts prescribed in Article V, section 5, of the Constitution of Nebraska appointed by the Governor and one additional citizen who shall be appointed at large, none of whom shall be (a) a justice or judge of the Supreme Court or a judge of any other court, active or retired, (b) a member of the Nebraska State Bar Association, or (c) an immediate family member of any person listed in subdivisions (a) and (b) of this subdivision. The Justice or judge of the Supreme Court serving on the commission shall also serve as chairperson of the commission.

Sec. 5. The State Court Administrator shall compile uniform and accurate statistics which will assist in the evaluation of judicial workloads. The judicial workload statistics shall be based on caseload numbers weighted by category of case. The judicial workload statistics shall be compiled annually for each district, county, and separate juvenile court judicial district in the state.

Sec. 6. In the event of the death, retirement, resignation, or removal of a district, county, or separate juvenile judge or the failure of a district, county, or separate juvenile judge to be retained in office:

(1) If the most recent judicial workload statistics compiled pursuant to section 5 of this act demonstrate that the affected judicial district has a judicial workload average equal to or above the median of judicial workload averages for the state as a whole, a judicial vacancy shall exist in the affected judicial district. The chairperson of the Judicial Resources Commission shall then declare that a judicial vacancy exists. The Supreme Court, in the case of a county or district court, shall determine the site of the primary office location, and the Clerk of the Supreme Court shall proceed with notification of the judicial nominating commission relating to such vacancy pursuant to section 24-810; or

(2) If the most recent judicial workload statistics compiled pursuant to section 5 of this act demonstrate that the affected judicial district has a judicial workload average below the median of judicial workload averages for the state as a whole, the Judicial Resources Commission shall, after holding a public hearing, determine whether a judicial vacancy exists in the affected district or any other judicial district or whether a new judgeship or change in number of judicial districts or boundaries is appropriate. The public hearing may include videoconferencing.

Sec. 7. By December 15, 1995, and each year thereafter, the Judicial Resources Commission shall hold a hearing to determine whether (1) a new judgeship is appropriate in any judicial district or a reduction in

judgeships is appropriate in any judicial district or (2) the judicial district boundaries or the number of judicial districts should be changed for the district or county courts. The commission shall also examine current caseload statistics and make any appropriate recommendations for the more balanced use of existing judicial resources. The State Court Administrator shall provide adequate administrative support and information as requested by the commission. A report of this hearing and any recommendations shall be filed by the commission with the Legislature, the Governor, and the Supreme Court on or before December 31 of each year.

Sec. 8. The Judicial Resources Commission's determination of whether a judicial vacancy exists or a new judgeship, a reduction in judgeships, a change in number of judicial districts or boundaries, or the reallocation of a judgeship from a district, county, or separate juvenile court in one judicial district to a district, county, or separate juvenile court in another judicial district is appropriate pursuant to section 6 or 7 of this act shall be based upon (1) its analysis of judicial workload statistics compiled pursuant to section 5 of this act, (2) whether litigants in the judicial district have adequate access to the courts, (3) the population of the judicial district, (4) other judicial duties and travel time involved within the judicial district, and (5) other factors determined by the Supreme Court to be necessary to assure efficiency and maximum service. The State Court Administrator shall provide adequate administrative support and information as requested by the commission. After making a determination, the commission shall report the results to the Legislature and recommend any legislative changes which are needed. If no changes in existing law are needed and none are recommended by the commission, no legislative action shall be necessary to fill any judicial vacancy determined to exist. The Legislature shall not create a new judgeship unless the commission recommends the creation of a new judgeship in its report. If legislative action is required but none is taken in the next legislative session following the report, the commission shall hold another hearing on the matter and shall determine whether a judicial vacancy exists or again recommend legislative changes to the Legislature in its report.

Sec. 9. For purposes of section 10 of this act and section 24-810, the date of a final determination of a district, county, or separate juvenile court judicial vacancy shall be:

(1) The date a judicial vacancy is determined by the Judicial Resources Commission pursuant to section 6 or 8 of this act; or

(2) If a determination is made by the commission that a move of a judgeship from one district to another or between county and district court, a new judgeship, or a change in number of judicial districts or boundaries is appropriate pursuant to section 6 or 7 of this act, the date the Governor approves legislation or the Legislature overrides a veto of legislation creating or moving a judicial vacancy.

Sec. 10. If a final determination of a district or county court judicial vacancy is made, the Supreme Court shall, after consultation with a representative sampling of the lawyers of the judicial district, determine and announce the county where the primary office for the judgeship shall be located. In designating a primary office, the Supreme Court shall locate judges so as to provide maximum service to all areas of the judicial district. If more than one county is acceptable as a primary office, the Supreme Court may so state and may leave the final choice of the location of the primary office to the judge. The principal criterion used by the Supreme Court when designating a primary office shall be the judicial workload statistics compiled by the State Court Administrator pursuant to section 5 of this act.

Sec. 11. Section 24-810, Revised Statutes Supplement, 1994, is amended to read:

24-810. (1) Prior to the time for the first meeting of the judicial nominating commission prescribed in subsection (5) of this section, the Supreme Court shall, after consultations with attorneys of the district as it deems appropriate, determine and announce to the judicial nominating commission the county where the primary office for the appointed judge shall be located. In designating a primary office, the Supreme Court shall locate judges so as to provide maximum service to all areas of the judicial district. If more than one county is acceptable as a primary office, the Supreme Court may so state and may leave the final choice of the location of the primary office to the appointed judge. The State Court Administrator, with advice from the district and county judges associations, shall develop a uniform and accurate system of measuring judicial workloads which shall be the principal criterion used by the Supreme Court when designating a primary office.

(2) In the event of the death, retirement, resignation, or removal of any district or county judge, the failure of a district or county judge to

be retained in office; or a need for a change in boundaries or the number of district or county court judicial districts or in the number of district or county judgeships authorized by law; the Judicial Resources Commission, after holding a public hearing in the affected district or districts, shall determine:

- (a) Whether a judicial vacancy exists and the location of that vacancy;
- (b) Whether the judicial district boundaries or the number of districts should be changed for county or district courts;
- (c) Whether the number of district or county judges should be increased, decreased, or remain the same; or
- (d) Any combination of subdivisions (a); (b); and (c) of this subsection.

The commission's determination shall be based upon the analysis of caseloads weighted by category; adequate access to the courts by litigants; population; other judicial duties; travel time; and other factors determined by the commission to be necessary to assure efficiency and service. After making a determination, the commission shall make a recommendation to the Legislature. If no changes in existing law are recommended by the commission, no legislative action shall be necessary to fill any vacancy resulting from the death, retirement, resignation, or removal of a judge.

(3) The Judicial Resources Commission shall adopt and promulgate rules and regulations on the procedures to be followed in making the determinations pursuant to subsection (2) of this section. The State Court Administrator shall provide adequate administrative support and information as is requested by the commission.

(4) For purposes of subsection (5) of this section, the date of a final determination shall be (a) the date the Governor approves legislation or the legislature overrides a veto of legislation creating or moving a judicial vacancy; (b) ten days after the date of adjournment sine die by the legislature in cases of a recommendation on which action is required but no action is taken by the legislature in its regular legislative session commencing following the recommendation; (c) the date of a designation of a principal office location by the Supreme Court; or (d) the date of the determination by the commission that there be no change.

(1) (5) When a final determination of the location of a district, or county, or separate juvenile court judicial vacancy has been made pursuant to section 9 of this act or in the event of a judicial vacancy in any other court, the Clerk of the Supreme Court shall contact the chairperson of the judicial nominating commission relating to such vacancy and shall ascertain from him or her a time and place for the first meeting of such judicial nominating commission, at which time a public hearing will be held. He or she The first public hearing shall be held within sixty days after final determination of the vacancy occurs. The chairperson shall thereupon notify each commission member in writing of the time and place of the meeting and shall also cause appropriate notice to be published by various news media of the time and place of the public hearing of the judicial nominating commission and of the interest of the commission in receiving information relating to qualified candidates for the judicial vacancy. Any lawyer meeting the statutory requirements to serve as a judge who is interested in being nominated and appointed to such judgeship shall signify his or her interest by filing the appropriate application with the proper entity at least twenty-one days prior to the public hearing. At least ten days prior to the public hearing, the chairperson shall release to the public the names of all lawyers who have applied for such judgeship. Any member of the public shall be entitled to attend the public hearing to express, either orally or in writing, his or her views concerning candidates for the judicial vacancy.

(2) (6) After the public hearing, the judicial nominating commission shall hold such additional private or confidential meetings as it determines to be necessary. Additional information may be submitted in writing to the commission at any time prior to its selection of qualified candidates to fill the vacancy. The commission shall make such independent investigation and inquiry as it considers necessary or expedient to determine the qualifications of candidates for the judicial vacancy and shall take such action as it deems necessary or expedient to encourage qualified candidates to accept judicial office or nomination for judicial office.

(3) (7) The judicial nominating commission may, before or after the hearing provided for in subsection (5) (1) of this section, institute a search for additional candidates. If additional candidates are obtained, the commission shall hold further public hearings in the same manner as provided in such subsection.

(4) (8) The names of candidates shall be submitted to the Governor

within ninety days after the date a final determination has been made pursuant to subsection (4) of this section of the location of a district, or county, or separate juvenile court judicial vacancy or, in the event of a judicial vacancy in any other court, after a judicial vacancy occurred if one public hearing is held and within one hundred twenty days if more than one public hearing is held.

(9) ~~The first public hearing provided for in this section shall be held within sixty days after final determination of the vacancy occurs.~~

Sec. 12. Sections 2 and 15 of this act become operative on January 1, 1997. Sections 3 to 11 and 14 of this act become operative three calendar months after the adjournment of this legislative session. The other sections of this act become operative on their effective date.

Sec. 13. Original section 24-201.01, Revised Statutes Supplement, 1994, is repealed.

Sec. 14. Original sections 24-803, 24-809.01, and 24-810, Revised Statutes Supplement, 1994, are repealed.

Sec. 15. Original section 24-301.02, Revised Statutes Supplement, 1994, is repealed.

Sec. 16. Since an emergency exists, this act takes effect when passed and approved according to law.